the agreement between the parties contemplated merely a settlement of the difference between the contract and the market price and was illegal. *Jennings* v. *Morris* (1905), — Pa. —, 61 Atl. Rep. 115.

This case is of interest as illustrating the extent to which the courts will sometimes go in inquiring into the real intention of the parties to an alleged wagering contract. In general, except as otherwise provided by express enactment, a dealing in futures is not illegal; *Barnett* v. *Baxter,* 64 Ill. App. 544; *Mohr* v. *Meson,* 47 *Minn.* 228, 49 N. W. 862; *Morrissey* v. *Broomal* 37 Neb. 766, 56 N. W. 383; and the weight of authority seems to be that a purchase on margins is not necessarily unenforceable; *Hatch* v. *Douglas,* 48 Conn. 116, 40 Am. Rep. 154; *Wall* v. *Schneider,* 59 Wis. 352, 18 N. W. 443; *In re Taylor,* 192 Pa. 304, 43 Atl. 973.; *Tantum* v. *Arnold,* 42 N. J. Eq. 60, 6 Atl. 316. But such contracts must intend actual delivery and not simply a settlement of differences; *Pearce* v. *Rice,* 142 U. S. 28, 35 L. Ed. 925; *Billingslea* v. *Smith,* 77 Md. 504, 26 Atl. 1077. Though if one party; only, intended actual delivery, the contract has been held valid; *Bibb* v. *Allen,* 149 U. S. 481, 37 L. Ed. 819; *Clews* v. *Jamieson,* 182 U. S. 461, 45 L. Ed 1183. In any given instance the question as to what the intention really was, is for the jury. *Gregory* v. *Wendell,* 39 Mich. 337; *Kirkpatrick* v. *Adams,* 20 Fed. 287; *Watts* v. *Costello,* 40 Ill. App. 307.

SURETYSHIP—RES JUDICATA—SURETY ESTOPPED BY JUDGMENT AGAINST PRINCIPAL.—The maker of a note had sued the holder for possession of it, alleging payment. The holder denied payment, and judgment was rendered in his favor. In this action by the holder against the maker and the surety, the latter pleads payment, and admits that the payment he pleads is the one on which judgment was passed in the first suit. The holder demurs, asserting that the judgment is conclusive upon the surety that there was no payment. *Held,* that the demurrer should be sustained. *Beh* v. *Bay et al.* (1905), — Ia. —, 103 N. W. Rep. 119.

Privity, such as works an estoppel under the doctrine res judicata, does not exist between principal and surety. *Giltinan* v. *Strong,* 64 Pa. St. 242. The great body of English and American authority holds that a judgment against the principal is not conclusive on a surety but only prima facie evidence against him. *Grafton* v. *Hinkley et al.,* 111 Wis. 46; BIGELOW ON ESTOPPEL (5th Ed.) p. 150, n. 2; BRANDT, SURETYSHIP (2nd Ed.) §630. The only widely recognized exceptions to this rule are cases of extraordinary suretyship, as of official bonds, or cases where the surety was a party to the proceedings. BLACK, JUDGMENTS, §§ 586-589. The Iowa decisions on the point are inconsistent. In *Charles* v. *Haskins et al.,* 14 Ia. 471, a judgment against a sheriff was held to be only prima facie evidence against the surety on the official bond; the better opinions hold such a judgment conclusive on the assurer. *McMicken* v. *Commonwealth,* 58 Pa. St. 213; *Dennie* v. *Smith,* 129 Mass. 143. The reason for this stricter liability seems to be that in official bonds, as in those of sheriffs or administrators, the sureties impliedly bind themselves by the result of any judicial proceedings taken against their principals. Then in ordinary suretyship, the Iowa court went to this extreme in *McConnell* v. *Poor,* 113 Ia. 133, that a judgment against the principal

"was entitled to no consideration against the surety, unless by the terms of the contract the surety was to be bound thereby." Yet the present court somewhat arbitrarily declared that case inapplicable to the facts in this, and rested its decision on *Bank of New London* v. *Ketchum et al.*, 66 Wis 428, 29 N. W. Rep. 216. The latter case is exactly in point, but was decided, as was this, with more regard to the inconvenience of re-litigation than to the law and equity that every man is entitled to his day in court.

TAXATION—OFFICERS' FEES—UNIFORMITY.—Relator, a duly authorized administrator of a partnership estate, presented an inventory and appraisement of said estate to defendant, the county clerk, for filing. Defendant demanded two hundred and twenty-five dollars, as probate fees, under a statute requiring the payment of fees to the clerk in probate proceedings proportional in amount to the property owned by the estate, and refused to file any papers for the administration of the estate until such sum be paid. The state constitution provides for a uniform and equal rate of assessment and taxation of property. This action was brought by relator to secure a writ of mandamus directing the clerk to receive and file the papers in the probate proceedings. *Held,* that the writ should be granted, on the ground that the fees amounted to a property tax, and that the statute authorizing them violated the constitutional provisions with respect to the uniformity of property taxation. *State ex rel. Nettleton* v. *Case* (1905), — Wash. —, 81 Pac. Rep. 554.

If a charge, though in the statute authorizing it designated as a "fee", is in fact based entirely upon a property valuation and not upon actual and necessary services rendered or to be rendered, it is a property tax, rather than a fee for services. *State ex rel. Davidson* v. *Gorman,* 40 Minn. 232, 41 N. W. 948; *State ex rel. Sanderson* v. *Mann,* 76 Wis. 469, 45 N. W. 526; *Fatjo* v. *Pfister,* 117 Cal. 83, 48 Pac. 1012. A law providing for the collection of a "fee", which has for its direct and only purpose the creation of a fund by an exaction on property to be paid into the state treasury to be used indiscriminately for any and all public purposes, creates a tax. *Pittsburg, C. & St. L. Ry. Co.* v. *State,* 49 Ohio State 189, 30 N. W. 435, directly in point; and by way of inference *In re Wau Yin,* 22 Fed. Rep. 701, where a charge as a "license fee" was held to be a tax because the charge was much greater than the service rendered would warrant.

TELEGRAM—INTERSTATE COMMERCE—PENALTY BY STATE STATUTE FOR NON-DELIVERY.—A telegram was received at one point in Virginia to be delivered at another in the same state, but in transmission was lost in West Virginia. In this action for the penalty inflicted by state statute for non-delivery, *Held,* that the transmission was not interstate commerce and that the company was liable. *Western Union Telegraph Co.* v. *Hughes* (1905), — Va. —, 51 S. E. Rep. 225.

Two judges dissented. They were of opinion that a Virginia statute could not penalize the defendant for a default that occurred in West Virginia. But the company owed the plaintiff the duty of delivering the telegram at the prescribed destination, which was in Virginia, and so default occurred